

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:)	Chapter 11
)	
W.R. GRACE & CO., <u>et al.</u> ,)	Case No. 01-01139 (JFK)
)	(Jointly Administered)
Debtors.)	
)	Re: Docket Number 18571

**UNITED STATES' CERTIFICATE OF COUNSEL REGARDING ORDER APPROVING
THE CURTIS BAY FUSRAP MATTER SETTLEMENT AGREEMENT
(DOCKET NO. 18571)**

The United States submits this certificate of counsel regarding Debtors' Motion for Entry of an Order Approving a Settlement Agreement With the United States Regarding the Curtis Bay FUSRAP Matter. (Docket No. 18301.) The United States avers as follows:

1. On March 14, 2008, the United States on behalf of United States Army Corps of Engineers (the "Corps"), lodged a Settlement Agreement with W.R. Grace & Co. and certain of its affiliates (collectively "Debtors"), that will resolve the Corps' claims for the cleanup of environmental contamination at the Curtis Bay Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq. The environmental contamination relates to Debtors' processing of monazite sands into thorium hydroxide in the late 1950s under a contract with the United States Atomic Energy Commission.

2. In the Notice of Lodging, the United States informed the Court that it would seek public comment on the proposed Settlement Agreement. The United States subsequently sought such public comment. See 73 Fed. Reg. 15,007 (March 20, 2008).

3. The United States received no comments on the Settlement Agreement.

4. The well settled standard applied to review of the United States' proposed settlements under environmental laws is whether the settlement is fair, reasonable and consistent with the environmental laws. In re Tutu Water Wells CERCLA Litig., 326 F.3d 201, 207 (3d Cir. 2003); United States v. Southeastern Pa. Transp. Auth., 235 F.3d 817, 823 (3d Cir. 2000); United States v. Akzo Coatings of Am., Inc., 949 F.2d 1409, 1424, 1426 (6th Cir. 1991); United States v. Cannons Eng'g Corp., 899 F.2d 79, 84 (1st Cir. 1990). Review of such settlements is committed to the discretion of the reviewing court, see United States v. Hooker Chem. & Plastics Corp., 776 F.2d 410, 411 (2d Cir. 1985), which is to exercise this discretion in a limited and deferential manner, Akzo Coatings, 949 F.2d at 1424; Cannons Eng'g, 899 F.2d at 84. A reviewing court "must generally be at its most deferential" in reviewing settlements of agencies charged with primary responsibility for enforcing the environmental laws because the "federal courts have neither the time nor the expertise [to make] scientific decisions regarding toxic substance cleanup." Akzo Coatings, 949 F.2d at 1424 (quoting Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87 (1983)).

5. The proposed Settlement Agreement represents a reasonable and fair compromise of Debtors' liability for cleanup of the Curtis Bay Site (and Debtors' related contentions that the United States is similarly liable for the cleanup). The Settlement Agreement, which was the result of several years of arms length negotiations by experienced counsel, requires Debtors to implement a Corps-selected cleanup action and allocates responsibility between the parties for the costs of the cleanup. The settlement avoids the need for protracted and expensive litigation and adjudication of the factual and legal issues that would otherwise further deplete the limited

funds of the Debtors. It also benefits the public by ensuring that a contaminated property will be cleaned up in an expeditious matter. For these reasons, the proposed Settlement Agreement is fair, reasonable and consistent with the environmental laws.

6. Accordingly, the United States supports entry of the Order approving the Settlement Agreement.

Respectfully submitted,

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